

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,	)	No. 3:17-cv-05760 BHS
	)	
Plaintiff,	)	<b>DEFENDANTS' ANSWER TO FIRST</b>
	)	<b>AMENDED COMPLAINT FOR</b>
vs.	)	<b>INJUNCTIVE RELIEF AND</b>
	)	<b>DAMAGES</b>
	)	
KEVIN SYKES-BONNETT and SYKED	)	<b>JURY TRIAL DEMANDED</b>
ECU TUNING INCORPORATED, a	)	
Washington corporation,	)	
	)	
Defendants.	)	

Defendants Kevin Sykes-Bonnett, John Martinson, and Syked ECU Tuning, Inc. (collectively "Syked Tuning") state by way of answer and affirmative defenses to Plaintiff's First Amended Complaint for Injunctive Relief and Damages ("Complaint") as follows.

**NATURE OF THE ACTION**

1. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

2. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

3. Denied.

4. Defendants admit only that the Complaint purports to allege the enumerated violations. Defendants deny that any such violations occurred or that the allegations have any merit.

**PARTIES**

5. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

6. Admitted.

7. Admitted.

8. Admitted.

**JURISDICTION AND VENUE**

9. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

10. Admitted that this Court has jurisdiction. Denied that any claims have any merit.

11. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

**BACKGROUND FACTS**

12. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

13. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

14. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

15. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

16. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

17. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

18. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

1           19. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3           20. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
4 and, therefore, deny on at least that basis.

5           21. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
6 and, therefore, deny on at least that basis.

7           22. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
8 and, therefore, deny on at least that basis.

9           23. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
10 and, therefore, deny on at least that basis.

11           24. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
12 and, therefore, deny on at least that basis.

13           25. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
14 and, therefore, deny on at least that basis.

15           26. Admitted.

16           27. Denied.

17           28. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
18 and, therefore, deny on at least that basis.

19           29. Denied that Defendants provided anything inappropriate to Eric Brooks, or  
20 otherwise violated any provision of any EULA.

21           30. Denied.

22           31. Denied.

23           32. Denied.

24           33. Denied.

25           34. This paragraph misquotes and mischaracterizes any communication between  
26 Defendants and Eric Brooks. On that basis, this paragraph is denied.  
27

1           35.     Admitted that Plaintiff wrongfully withheld a large number of credits from  
2 Defendants which were owed by Plaintiff.

3           36.     Admitted only that Plaintiff ultimately provided the wrongfully withheld credits  
4 after much prompting by Defendants.

5           37.     Admitted.

6           38.     Admitted.

7           39.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
8 and, therefore, deny on at least that basis.

9           40.     Defendants deny the allegations of this paragraph on the basis that any truthful  
10 facts are mischaracterized so as to imply other facts which are not true.

11          41.     Denied.

12          42.     Defendants deny the allegations of this paragraph on the basis that any truthful  
13 facts are mischaracterized so as to imply other facts which are not true.

14          43.     Defendants deny the allegations of this paragraph on the basis that any truthful  
15 facts are mischaracterized so as to imply other facts which are not true.

16          44.     Admitted.

17          45.     Admitted.

18          46.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
19 and, therefore, deny on at least that basis.

20          47.     Denied.

21          48.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
22 and, therefore, deny on at least that basis.

23          49.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
24 and, therefore, deny on at least that basis.

25          50.     Denied.

26          51.     Defendants are without sufficient knowledge of the facts alleged in this paragraph  
27 and, therefore, deny on at least that basis.

1           52. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3           53. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
4 and, therefore, deny on at least that basis.

5           54. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
6 and, therefore, deny on at least that basis.

7           55. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
8 and, therefore, deny on at least that basis.

9           56. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
10 and, therefore, deny on at least that basis.

11          57. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
12 and, therefore, deny on at least that basis.

13          58. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
14 and, therefore, deny on at least that basis.

15          59. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
16 and, therefore, deny on at least that basis.

17          60. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
18 and, therefore, deny on at least that basis.

19          61. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
20 and, therefore, deny on at least that basis.

21          62. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
22 and, therefore, deny on at least that basis.

23          63. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
24 and, therefore, deny on at least that basis.

25          64. Denied.

26          65. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
27 and, therefore, deny on at least that basis.

66. Denied.

67. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

68. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

69. Denied.

70. Denied.

71. Denied as to Defendants. Defendants have no knowledge of the remaining allegations in this paragraph and, therefore, deny on at least that basis.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied that Defendants have committed any wrongdoing. Defendants are without sufficient knowledge of the remaining facts alleged in this paragraph and, therefore, deny on at least that basis.

80. Denied.

81. Denied.

## COUNT I

### **VIOLATION OF COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. §1030**

82. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

83. Denied.

84. Denied.



1 101. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3 102. Denied.

4 103. Denied.

5 104. Denied.

6 105. Denied.

7 106. Denied.

8 107. Denied.

9 108. Denied.

10 109. Denied.

11 **COUNT III**

12 **VIOLATION OF THE WASHINGTON UNIFORM TRADE SECRET ACT, RCW 19.108**

13 110. Syked Tuning incorporates by reference its answers to the allegations set forth in  
14 the Paragraphs above as if fully set forth herein.

15 111. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
16 and, therefore, deny on at least that basis.

17 112. Denied.

18 113. Denied.

19 114. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
20 and, therefore, deny on at least that basis.

21 115. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
22 and, therefore, deny on at least that basis.

23 116. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
24 and, therefore, deny on at least that basis.

25 117. Denied.

26 118. Denied.

27 119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

#### COUNT IV

#### **VIOLATION OF THE ILLINOIS TRADE SECRETS ACT, 765 ILCS 1065/1, ET. SEQ.**

125. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

126. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

127. Denied.

128. Denied.

129. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

130. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

131. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

**COUNT V**

**UNFAIR COMPETITION UNDER THE**

**WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.020**

140. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

**COUNT VI**

**UNFAIR COMPETITION UNDER THE ILLINOIS CONSUMER FRAUD AND**

**DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1 ET. SEQ.**

146. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

151. Denied.

**COUNT VII**

**BREACH OF CONTRACT**

152. Syked Tuning incorporates by reference its answers to the allegations set forth in the Paragraphs above as if fully set forth herein.

153. Denied.

154. Defendants are without sufficient knowledge of the facts alleged in this paragraph and, therefore, deny on at least that basis.

1 155. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
2 and, therefore, deny on at least that basis.

3 156. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
4 and, therefore, deny on at least that basis.

5 157. Denied.

6 158. Denied.

7 159. Denied.

8 **COUNT VIII**

9 **TORTIOUS INTEFERENCE WITH PROSPECTIVE**

10 **CONTRACTUAL OR ECONOMIC RELATIONS**

11 160. Syked Tuning incorporates by reference its answers to the allegations set forth in  
12 the Paragraphs above as if fully set forth herein.

13 161. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
14 and, therefore, deny on at least that basis.

15 162. Defendants are without sufficient knowledge of the facts alleged in this paragraph  
16 and, therefore, deny on at least that basis.

17 163. Denied.

18 164. Denied.

19 165. Denied.

20 166. Denied.

21 **AFFIRMATIVE DEFENSES**

22 Syked Tuning incorporates by reference the foregoing paragraphs in their entirety. Syked  
23 Tuning hereby asserts the following affirmative defenses and reserves the right to assert, in the  
24 future, such additional defenses as may become available or apparent during discovery or through  
25 other pretrial proceedings. The assertion of any defense as an affirmative defense herein is not,  
26 and is not intended as, an admission that defendants have the burden of proof on any such defense  
27 or on any related element of Plaintiff's claims.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of nominative fair use.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the acts complained of by Plaintiff are acts of third parties and not of Defendants, for which Defendants are not responsible.

**NINTH AFFIRMATIVE DEFENSE**

To the extent that Defendants may be found liable under any legal theory, any amounts Defendants may owe must be limited or reduced by contribution, setoff, indemnification, apportionment, or other relief.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because of its failure to mitigate damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because it failed to join one or more indispensable parties to this action.

Syked Tuning asserts these affirmative defenses in order to preserve its right to assert them at trial, to give Plaintiff notice of its intention to assert these defenses, and to avoid waiver of any defenses. Syked Tuning reserves its right to amend or supplement its affirmative defenses in the event additional information is obtained, through discovery or otherwise, that indicates the applicability of additional affirmative defenses.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Syked Tuning demands a trial by jury of this action.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. respectfully request the following relief:

- A. Dismissal with prejudice of the claims asserted against Kevin Sykes-Bonnett, John Martinson, and Syked ECU Tuning, Inc.;
- B. Attorneys' fees and costs; and
- C. Any other relief this Court deems just and equitable.

1 DATED: July 20, 2018

2 LANE POWELL PC

3 By s/John E. Whitaker

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9 Attorneys for Defendants Kevin Sykes-  
10 Bonnett, John Martinson and Syked ECU  
11 Tuning Incorporated  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 20, 2018 I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

**Attorneys for Plaintiff HP TUNERS, LLC**

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 by **Hand Delivery**  
 by **Overnight Delivery**

**Attorneys for Plaintiff HP TUNERS, LLC**

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 by **Hand Delivery**  
 by **Overnight Delivery**

Executed on July 20, 2018, at Seattle, Washington.

s/Kathi Milner

Kathi Milner, Legal Assistant